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November 11, 2003

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S. W. – Room TWB-204  
Washington, D. C. 20554

Re: Verizon Section 272 Compliance Biennial Audit Report, CC Docket No.  
96-150; EB Docket No. 03-200

Dear Ms. Dortch:

Attached please find AT&T's response to Verizon's Application for Review of the Commission's Order rejecting Verizon's request for confidential treatment of the redacted portions of its most recently filed Section 272 audit report.

Please place a copy in the record of the above-referenced proceedings.

Sincerely,

A handwritten signature in dark ink, appearing to read "F. Simone".

ATTACHMENT

cc: C. Libertelli  
M. Brill  
J. Rosenworcel  
D. Gonzales  
L. Zaina  
S. Bergmann  
D. Solomon  
M. Del Duca  
W. Davenport  
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November 11, 2003

VIA ELECTRONIC FILING

Mr. David H. Solomon  
Chief – Enforcement Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC, 20554

Re: Verizon Section 272 Compliance Biennial Audit Report,  
CC Docket No. 96-150; EB Docket No. 03-200

Dear Ms. Dortch:

AT&T Corp. urges the Commission to deny expeditiously Verizon's patently frivolous Application for Review of the Commission's Order rejecting Verizon's request for confidential treatment of the redacted portions of its most recently filed Section 272 audit report.<sup>1</sup>

The Bureau's determination denying Verizon's request for confidentiality falls squarely within the Commission's prior holdings in both the *First Verizon Confidentiality Order*, affirmed in the *Verizon Reconsideration Order*<sup>2</sup> and the *SBC Confidentiality Order*.<sup>3</sup> As the Bureau noted, in both of those prior proceedings, the Commission held that "the plain language of section 272(d)(2) mandates public disclosure of the results of the audit, contained in the audit report" and that "public disclosure of the audit results will promote meaningful comment on the

<sup>1</sup> *In the Matter of Section 272(d) Biennial Audit of Verizon Communications, Inc.*, Memorandum Opinion and Order, EB File No. EB-03-IH-0341 (rel. Aug. 8, 2003) ("*Second Verizon Confidentiality Order*"). Although AT&T is a party to this proceeding, AT&T was never served by Verizon with the Application for Review as required by Section 1.115(f) of the Commission's Rules, 45 C.F.R. § 1.115(f).

<sup>2</sup> *In the Matter of Accounting Safeguards Under the Telecommunications Act of 1996: Section 272(d) Biennial Audit Procedures*, Memorandum Opinion and Order, CC Docket No. 96-150, 17 FCC Rcd. 1374 ("*First Verizon Confidentiality Order*") *recon. denied*, Order on Reconsideration, 17 FCC Rcd. 6955 (2002) ("*Verizon Reconsideration Order*").

<sup>3</sup> *In the Matter of Accounting Safeguards Under the Telecommunications Act of 1996: Section 272(d) Biennial Audit Procedures*, Memorandum Opinion and Order, CC Docket No. 96-150, 17 FCC Rcd. 17012 (2002) ("*SBC Confidentiality Order*").

audit results pursuant to section 272(d)(2) and thereby help the Commission determine compliance with section 272 and the Commission's rules."<sup>4</sup> Verizon's claim in its Application for Review that the redacted data here is somehow different from the data it attempted to redact in the prior proceeding, or that its request for confidentiality more particularized, misstates the record and is, in all events, irrelevant. Similarly, the Bureau properly denied Verizon's request for disclosure only pursuant to a protective order in light of the Commission's prior determinations that "a protective order would run counter to the statutory requirement to make the audit results contained in the final section 272 audit available for public inspection and to allow any party to comment on the audit report."<sup>5</sup>

***The Bureau correctly held, based on the Commission's prior decisions in the First Verizon Confidentiality Order and the SBC Confidentiality Order, that "the plain language of section 272(d)(2) mandates public disclosure of the results of the audit, contained in the audit report."***

The Bureau, in holding that "the plain language of section 272(d)(2) mandates public disclosure of the results contained in the audit report," was quoting *verbatim* from both the *First Verizon Confidentiality Order* ¶ 5 ("the plain language of section 272(d)(2) mandates public disclosure of the results of the audit, which are contained in the final audit report") and the *SBC Confidentiality Order* ¶ 8 ("the plain language and purpose of section 272 require disclosure of a BOC's section 272 audit report").

Verizon's argument that this verbatim quote is "contradicted" by the *SBC Confidentiality Order*, which allowed the redaction of "the names of certain customers and vendors from the report,"<sup>6</sup> utterly misrepresents the Commission's holding in the *SBC Confidentiality Order*. There, the Commission allowed the redactions, holding that "[b]ecause of our conclusion that this information is not relevant to the subject matter of the audit, we need not reach whether, despite any competitive harm, it must nevertheless be made publicly available under the Section 272(d) Audit Order."<sup>7</sup> Thus, if it had been relevant, even this highly particularized information might have had to be disclosed. In the instant proceeding, the redacted performance measurement data is far more aggregated (monthly volumes rather than specific names) and, in any event, is clearly highly relevant to the subject matter of the audit – ensuring compliance with the non-discrimination obligations of Section 272(e)(1).

Verizon legal arguments that the *Confidential Treatment Order*,<sup>8</sup> *Qwest v. FCC*,<sup>9</sup> and *National Parks & Conservation Ass'n v. Morton*<sup>10</sup> require a different result were all raised in its

<sup>4</sup> *Second Verizon Confidentiality Order* ¶ 7, citing to *First Verizon Confidentiality Order* ¶¶ 5, 8 and *SBC Confidentiality Order*, ¶ 33.

<sup>5</sup> *Second Verizon Confidentiality Order*, ¶ 9, citing to *Verizon Reconsideration Order*, ¶ 3 and *SBC Confidentiality Order*, ¶ 35.

<sup>6</sup> Verizon's Application for Review at 3.

<sup>7</sup> *SBC Confidentiality Order*, ¶ 32.

<sup>8</sup> Report and Order, *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816 (1998).

<sup>9</sup> *Qwest v. FCC*, 229 F.3d 1172 (D.C. Cir. 2000).

<sup>10</sup> *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974).

Petition for Reconsideration of the *First Verizon Confidentiality Order*<sup>11</sup> and were *all* rejected by the Commission. The Commission, after considering these arguments, expressly held: “We disagree with Verizon that the information contained in the section 272(d) biennial audit report is protected from disclosure by another section in the Act ... [t]he biennial audit of a BOC’s compliance with the section 272 separate affiliate requirements is conducted under the specific authority of section 272(d)(2), not the general authority of section 220.”<sup>12</sup> The Commission further explained that “[t]he broad section 272(d) audit requirement and the mandatory public comment process are critical components in ensuring compliance with the separate affiliate safeguards and promoting competition in the market for in-region interLATA communications.”<sup>13</sup>

*Verizon’s claim that the redacted data here are different, and that its showing of confidentiality is more particularized, misstates the record and is, in all events, irrelevant.*

Verizon asserts that “the data that Verizon is seeking to protect here is different from, and more competitively sensitive than, the data that the Commission decided to release in the earlier audit report” because the data here involves “demand volumes associated with these performance data.”<sup>14</sup> Verizon further asserts that the data here is different “because these data are at a disaggregated level,” based on monthly data by product and state.<sup>15</sup>

Yet, a comparison of the data redacted and then required to be disclosed in Verizon’s First Section 272 audit<sup>16</sup> with that redacted in the Second Section 272 audit<sup>17</sup> demonstrates that Verizon is attempting to redact *precisely the same type of data* reported at precisely the *same* level of aggregation as in the prior proceeding. In *both* audits, Verizon attempted to redact information about monthly volumes for performance measurements.<sup>18</sup> Verizon makes much of

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<sup>11</sup> Compare, Verizon’s Petition for Reconsideration and Request for Stay filed in connection with the *First Verizon Confidentiality Order*, filed on January 15, 2002, CC Docket No. 96-150 (“Verizon’s Petition for Reconsideration and Request for Stay”) at 2-3, *with* its Application for Review at 3 and 7.

<sup>12</sup> *First Verizon Confidentiality Order*, ¶ 9.

<sup>13</sup> *Id.*, ¶ 12.

<sup>14</sup> Verizon’s Application for Review at 7.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> Tables 14a – 14c and 15-16 of Verizon’s First Section 272 audit, Report of Independent Accountants on Applying Agreed-Upon Procedures, prepared by PricewaterhouseCoopers LLP (the “Auditor”) and filed on June 11, 2001 (“*Verizon’s First Section 272 audit*”), Appendix A at 35-38 and 40-41, and Table 24 of Verizon’s Supplemental First Section 272 audit, Report of Independent Accountants on Applying Agreed-Upon Procedures, prepared by PricewaterhouseCoopers LLP filed on June 18, 2001, 2001 (“*Verizon’s Supplemental First Section 272 audit*”) Appendix F at 32-34.

<sup>17</sup> Attachment A to Verizon Communications Inc. Section 272 Biennial Agreed Upon Procedures Report for the engagement period January 2, 2001 to December 31, 2003, prepared by PricewaterhouseCoopers LLP and filed on June 12, 2003 (“*Verizon’s Second Section 272 audit*”).

<sup>18</sup> That is, Average Installation Interval, Percent Commitments Met, Average Repair Interval, Trouble Tickets, Firm Order Confirmations and PIC Change Intervals. The only difference

the fact that the data here is also broken out by product and state.<sup>19</sup> The short answer is that this was also true of the data in the Supplemental First Section 272 audit – it was also broken out by product and state.<sup>20</sup> Nevertheless disclosure was required. The broader answer is that in light of the Commission’s repeated determination that “the plain language of section 272(d)(2) mandates public disclosure of the results contained in the audit report” (other than perhaps the specific names of customers or vendors *but only to the extent those names are in fact irrelevant*) aggregate monthly data by state or product line must also be disclosed.

In *both* proceedings, Verizon made *precisely* the same argument for confidentiality. There, as here, Verizon claimed that the information was demand volumes;<sup>21</sup> there, as here, Verizon argued that “[i]f competitors were provided this information, it would give them insights into Verizon’s success in the exchange access market in each state.”<sup>22</sup> Yet, in the *First Verizon Confidentiality Order*, the Commission held that this data, “necessary to evaluate Verizon’s compliance with the section 272 nondiscrimination safeguards,” was *not confidential*,<sup>23</sup> and that “any potential harm from disclosure of aggregated information used to evaluate Verizon’s compliance with section 272 is eliminated because the information in the audit report is already dated. As Verizon points out, the long distance market is highly competitive and consumers frequently change long distance providers.”<sup>24</sup> Since the data in this proceeding is in all material respects the same, the Bureau’s similar determination was entirely proper and correct.

***The Bureau correctly held, based on the Commission’s prior decisions in the First Verizon Confidentiality Order and the SBC Confidentiality Order, that issuance of a Protective Order would be contrary to the public disclosure requirement of Section 272(d).***

In the *Verizon Reconsideration Order*, the Commission held that issuance of the requested protective order was utterly inconsistent with the public disclosure requirement of Section 272(d): “a protective order would run counter to the statutory requirement to make the audit results contained in the final section 272(d) audit report available for public inspection and to allow any party to comment on it.”<sup>25</sup>

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is that in its First Section 272 audit, Verizon disclosed the data for non-affiliates, but it has redacted the same information in its Second Section 272 audit.

<sup>19</sup> Verizon’s Application for Review at 6.

<sup>20</sup> Table 24 of *Verizon’s Supplemental First Section 272 audit*, Appendix F at 32-34.

<sup>21</sup> Verizon’s Application for Review at 7. *Compare with* Verizon’s Petition for Reconsideration and Request for Stay at 10 (claiming that the redacted data was “about the *volumes* of exchange access services that Verizon’s section 272 network affiliate purchased each month ... to meet *demand*”).

<sup>22</sup> Verizon’s Application for Review at 5. *Compare with* Verizon’s Petition for Reconsideration and Request for Stay at 10 (that “by comparing similar information in subsequent audits, competitors will be able to analyze the success of Verizon’s marketing strategies and the development of each market.”). This belies Verizon further claim that its request for confidentiality here is distinguishable because it is more particularized.

<sup>23</sup> *First Verizon Confidentiality Order*, ¶ 17.

<sup>24</sup> *Id.*, ¶ 19. As in the prior audit, the data here was collected nine months before the audit report was issued.

<sup>25</sup> *Verizon Reconsideration Order*, ¶ 3.

Verizon argues that a Protective Order should nevertheless be entered because: (1) the Commission allowed SBC to redact the names of certain customers or vendors; and (2) AT&T is represented by counsel experienced in participating in proceedings with restrictive protective orders.<sup>26</sup> But the Commission's decision in the *SBC Confidentiality Order* to allow the redaction of specific names found to be "*not relevant to the subject matter of the audit*" at most modifies Section 272(d)'s absolute public disclosure requirement to exclude irrelevant information, not the concededly relevant performance information at issue here. And Verizon's second argument utterly ignores the Commission's express holding in the *Verizon Reconsideration Order* that "[b]y its very nature, a protective order restricts access to information to certain personnel and restricts the ability of those personnel to use the information reviewed only for limited purposes. No restrictions or limitations on inspecting or commenting on the report are contained in section 272(d)(2)."<sup>27</sup> Counsel's experience in working with restrictive protective orders is irrelevant since the statute requires unrestricted public access to this data.

\* \* \*

Verizon's patently frivolous Application for Review has been allowed to languish for almost three months; allowing more time to pass may affect the remedies available to the Commission should any violations be found.<sup>28</sup> Verizon's Application for Review should be denied and the unredacted audit report released forthwith.

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<sup>26</sup> Verizon's Application for Review at 11.

<sup>27</sup> *Verizon Reconsideration Order*, ¶ 3.

<sup>28</sup> See, *In the Matter of Verizon Telephone Companies, Inc. Apparent Liability for Forfeiture*, File No. EB-03-IH-0245 (rel. Sept. 8, 2003). There, the Commission held, as to the Internet posting violations, that "because we are barred by the one year statute of limitations" all it could do was "admonish the company." *Id.*, ¶ 13.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Aryeh Friedman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Aryeh Friedman

cc: C. Libertelli  
M. Brill  
J. Rosenworcel  
D. Gonzales  
L. Zaina  
S. Bergmann  
  
D. Solomon  
M. Del Duca  
W. Davenport  
  
W. Maher  
J. Carlisle  
M. Carey  
B. Olson  
W. Dever  
C. Shewman